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State of New York Public Employment Relations Board Decisions from February 26, 1982

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from February 26, 1982

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :

BAY SHORE EDUCATIONAL SECRETARIES
ASSOCIATION, :

#2A-2/26/82

Respondent, :

BOARD DECISION AND
ORDER

upon the Charge of Violation of Section
210.1 of the Civil Service Law. :

CASE NO. D-0225

On September 4, 1981, Martin L. Barr, Counsel to this Board, filed a charge alleging that the Bay Shore Educational Secretaries Association (Association) had violated Civil Service Law (CSL) §210.1 in that it caused, instigated, encouraged, condoned and engaged in a one-day strike against the Bay Shore Union Free School District on June 2, 1981.

The charge further alleged that approximately 34 of the 53 employees in the negotiating unit participated in the strike.

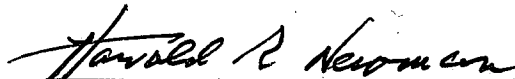
The Association filed an answer but thereafter agreed to withdraw it, thus admitting the factual allegations of the charge, upon the understanding that the charging party would recommend, and this Board would accept, a penalty of loss of the Association's right to have dues and agency shop fees deducted to the extent of one-fourth (1/4) of the amount that would otherwise be deducted during a year^{1/}. The charging party has so recommended.


^{1/} This is intended to be the equivalent of a three-month suspension of such right. Since the deductions are not made uniformly throughout the year, it is expressed as a fraction of the annual deduction.

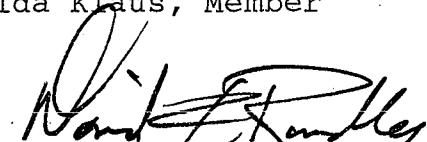
On the basis of the unanswered charge, we find that the Association violated CSL §210.1 in that it engaged in a strike as charged, and we determine that the recommended penalty is a reasonable one and will effectuate the policies of the Act.

WE ORDER that the deduction rights of the Bay Shore Educational Secretaries Association be suspended, commencing on the first practicable date, and continuing for such period of time during which one-fourth (1/4) of its annual agency shop fees, if any, and dues would otherwise be deducted. Thereafter, no dues or agency shop fees shall be deducted on its behalf by the Bay Shore Union Free School District until the Bay Shore Educational Secretaries Association affirms that it no longer asserts the right to strike against any government as required by the provisions of CSL §210.3(g).

DATED: Albany, New York
February 25, 1982


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#2B-2/26/82

NEW YORK STATE PUBLIC EMPLOYEES'
FEDERATION,

BOARD DECISION ON MOTION

Respondent,

-and-

CASE NOS. U-4779 & U-5391

HARRY FARKAS,

Charging Party.

On March 24, 1980, Harry Farkas, an employee of the New York State Department of Health (Department), who is in the Professional, Scientific and Technical employees negotiating unit, complained to the Public Employees Federation (PEF), the certified representative of that unit, that the Department had improperly passed him over for promotion. PEF told Farkas that it found no "demonstrated illegality" in the action of the Department and on June 24, 1980, Farkas filed charge U-4779 in which he alleged that PEF violated its duty of fair representation to him by failing to give adequate attention to his complaint.

At a pre-hearing conference held on August 5, 1980, Farkas conditionally withdrew his charge upon PEF's written assurance that it would perform two specific acts. The first was that it would advise him of the nature of the investigation it claimed to have made with regard to the Department's action. The second was that it would provide him with an attorney's answer to the question of the legality of the State's action which was the subject of his charge. Two months later PEF's attorney sent Farkas a letter

containing what purported to be a legal analysis of the State's action. That letter reaffirmed PEF's position that it would not take further action.

Asserting that the attorney's letter did not deal with the substance of the legal issues raised in his complaint, Farkas requested that the hearing officer reopen the case. The hearing officer replied on October 14, 1980, "Since the matter was withdrawn unconditionally, it is not now subject to reopening." Once again, Farkas wrote to the hearing officer and argued that the withdrawal of the charge had been conditioned upon PEF's doing certain acts which, he alleged, it did not do. In that letter he asked the hearing officer to advise him what relief was available to him under the Taylor Law in view of PEF's inaction. The hearing officer replied on January 14, 1981, saying that nothing could be done because

"[W]here it appears that conditions for settlement have been met, PERB will not reopen the matter closed on the basis thereof. Such is the case here. Therefore, I see no avenue available to you before PERB on your original complaint."

Thereafter, Farkas complained to the Director of Public Employment Practices and Representation but that complaint, too, was unavailing. On April 21, 1981, he filed a second charge against PEF (U-5391). This charge also complained that PEF violated its duty to him by failing to give adequate attention to his complaint that the Department improperly denied him an opportunity for promotion. Among other things, the relief sought in the second case included the reopening of the first.

The charge in U-5391 differed from that in U-4779 in some details, but the hearing officer found the differences to be inconsequential. As the charge dealt with events that transpired more than four months before it was filed, he dismissed it on the ground that it was not timely. Dealing with the request for the reopening of the first case, the hearing officer noted that the matter was beyond his authority and must be addressed to this Board.

Farkas then filed exceptions to the hearing officer's decision. We ruled on them on January 11, 1982, affirming the hearing officer and denying Farkas' request for the reopening of the earlier case. Explaining the second point, we noted that the hearing officer had written to Farkas on January 14, 1981, that the earlier case would not be reopened because the condition of withdrawal had been met and that this letter of the hearing officer should have been treated as a final decision. Accordingly, the time during which to file exceptions to this decision expired within 15 working days of Farkas' receipt of the letter.

Farkas has now moved this Board to reconsider its decision of January 11, 1982. PEF has responded to the motion and has urged us to deny it.

Insofar as the motion addresses the substantive issues relating to U-5391, it makes no point that was not considered by us in our former decision, and, to that extent, the motion is denied. Insofar as it addresses our refusal, in that decision, to reopen U-4779, the motion is persuasive. Ordinarily we would not permit a party to seek to reopen an earlier case by the filing

of a new improper practice charge. As we noted in our former decision, the timely filing of exceptions to a hearing officer's decision is the usual and proper procedure for bringing a case before us. Here, however, Farkas makes the point that the letters of the hearing officer denying his request to reopen U-4779 should not have been deemed decisions because they were not in the form of a formal decision nor distributed in the manner prescribed by our rules. Moreover, the hearing officer's letters informed Farkas that there was no way available to him to bring the matter to this Board. Thus, Farkas was not put on notice that he could have filed exceptions to the letters and thereby brought the issue to this Board.

Having found this argument to be persuasive, we confronted for the first time the question of whether the conditions for the withdrawal of the charge were met. In doing so, we note that the conditions were sufficiently narrow and concrete for the question to be readily susceptible to answer. Where a charge is withdrawn upon a written understanding that such narrow and concrete conditions be met by a respondent and the conditions are of a material nature, the failure of the respondent to perform those acts may nullify the withdrawal of the charge. Such is the case here.

The record indicates that Farkas' complaint was that PEF would not represent him in a claim that the Department reclassified and altered the qualification for a position within his promotional line solely for the purpose of denying him that promotional opportunity. Thus, he was not challenging the Department's general power to reclassify or alter job qualifications, but was claiming that the reclassification was undertaken in order to evade Civil Service merit and fitness requirements. PEF's attorney's letter

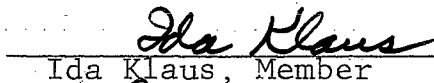
did not address this claim. It merely contained a correct recitation of Farkas' rights assuming a proper reclassification.^{1/}

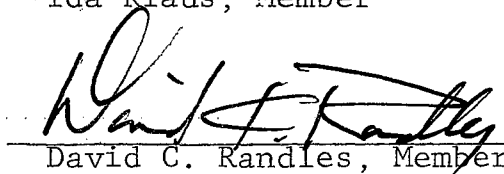
Accordingly, we conclude that the condition for withdrawal of the charge in U-4779 was not met.

NOW, THEREFORE, WE ORDER that U-4779 be reopened and remanded to the hearing officer for further proceedings consistent with this opinion.

DATED: February 26, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

^{1/} Having found that the second condition for the withdrawal was not met, we do not find it necessary to determine whether the first condition was met.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of : #2C-2/26/82
COMSEWOGUE UNION FREE SCHOOL DISTRICT : BOARD DECISION AND ORDER
Respondent, :
-and- : CASE NO. U-5166
PORT JEFFERSON STATION TEACHERS :
ASSOCIATION, LOCAL 2935, :
Charging Party. :

FREDERIC BLOCK, P.C. (SANDERS L. KURTZ,
ESQ., of Counsel), for Respondent.

RICHARD L. NEWCOMB, for Charging Party

The charge herein was filed by the Port Jefferson Station Teachers Association, Local 2935 (Association). It alleges that the Comsewogue Union Free School District (District) violated §209-a.1(a) of the Taylor Law in that Rovegna, its superintendent, reprimanded Bodkin, a representative of the Association, for giving advice of which he disapproved to Kaufman, a fellow unit employee, in the course of his duties as an Association representative.

FACTS

Kaufman was directed to make arrangements with Austen, Rovegna's administrative assistant, for makeup time for religious observance leave. Kaufman consulted with Bodkin who told him that he believed the requirement of makeup time to be a violation of contract and that a grievance was pending on the matter.^{1/}

^{1/} An arbitrator later determined that the requirement of makeup time was not a violation of contract.

According to the District, Kaufman also told Austen that Bodkin advised him to ignore the directive.^{2/} Austen reported this to Rovegna in a memorandum that referred to Bodkin by name and identified him as being in a "leadership position" in the Association, serving as the High School Building Representative.

Rovegna was upset by what he believed to be Bodkin's advice to Kaufman and on November 17, 1980, he wrote a memorandum to Bodkin which he designated as "an official reprimand". The Association then filed the charge herein and the District responded with a general denial.

The hearing officer scheduled seven pre-hearing conferences over a six-month period in 1981, but each of these was cancelled. Throughout this period, the hearing officer was in touch with the parties for the purpose of trying to help them settle the dispute between them. Failing to accomplish this and concluding that there were no significant issues of fact, he suggested that each submit a proposed statement of material facts, indicating that he would dispense with the hearing if there were no issues of fact. Each party sent him a statement containing its understanding of the facts. The District's statement contained arguments as well as allegations of fact. It argued that Bodkin should have utilized the grievance procedure in the contract "and not taken upon himself the unilateral right to decide that a teacher should ignore or disregard an Administrative directive"

^{2/} The Association denies this. It asserts that Kaufman was told to comply with the directive under protest. The record does not show which is correct and the question need not be resolved for the purpose of this decision as it finds a violation by the District even on the assumption that the District's statement of the fact is the correct one.

It also argued that, even if Bodkin were wrongly reprimanded, the reprimand would merely constitute a contract violation and should not be addressed by this Board. In this connection, it asked the hearing officer to issue no decision on the merits and that, if he contemplated doing so, he should reschedule a pre-hearing conference. The hearing officer denied this request; upon receiving the parties' statements, he informed them that there were no material facts in dispute and that he would issue a decision on the papers before him. He invited the parties to submit briefs, but neither party did so. Neither did they make any further complaint about the hearing officer's procedure.

On the basis of the material before him, the hearing officer determined that Rovegna's action coerced Bodkin because of his exercise of his protected rights. The matter now comes to us on the District's exceptions to that decision. The District makes four arguments in support of its exceptions. First we have no jurisdiction over the matter because the charge merely alleges a violation of contract. Second, in any event, the decision must be reversed because of procedural defects: the Board's rules require the hearing officer to hold a conference and a hearing and do not authorize him to request the parties to submit a summary of facts. Third, the record does not establish a fact that is essential to the hearing officer's decision, to wit, that Bodkin was acting in his capacity of representative of the Association when he advised Kaufman to ignore Rovegna's directive. Finally, Bodkin's advice to Kaufman constituted insubordination and was, therefore, not protected even if he did act in a representative capacity.

7357

DISCUSSION

Having reviewed the record and considered the arguments of the parties, we affirm the decision of the hearing officer.

It is clear that the conduct complained about in the charge constitutes a violation of §209-a.1(a) of the Taylor Law. That conduct consists of coercion of a public employee because he exercised rights protected by §202 of the Taylor Law. That it may also be a violation of contract is irrelevant. Section 205.5(d) of the Taylor Law merely provides that this Board "shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper . . . practice."

Given the difficulty that the hearing officer had in securing the parties' attendance at a conference, it was neither unreasonable nor inappropriate for him to invite them to submit their respective summaries of the facts. The parties accepted this invitation and the District may not now be heard to complain about the procedure for ascertaining the facts. The District's request that the hearing officer issue no decision without the mutual consent of the parties does not constitute a challenge to the adequacy of the record on which the hearing officer issued his decision. The hearing officer committed no error by refusing to comply with the District's request that, notwithstanding the completion of the record, he delay writing his decision until after he attempted to reschedule a pre-hearing conference.

A reasonable reading of the District's submission to the hearing officer makes it clear that it had not placed in issue the allegation that Bodkin was acting in his capacity as representative of the Association when he advised Kaufman to ignore Rovegna's directive. Moreover, the documents that constitute the record show that Rovegna knew that Bodkin was acting in such a capacity. The District's papers identify Bodkin as both the person who advised Kaufman and as "an individual in a leadership position in the Teachers Association."

This leaves the District's argument on the merits: that Bodkin did not enjoy a protected right to advise Kaufman to ignore Rovegna's directive because such advice constituted insubordination. The District makes two arguments in support of this proposition. The first is that a School District's reprimand of a teacher cannot constitute a violation of the Taylor Law. The basis of this argument is Holt v. Board of Education, 52 NY2d 625 (1981), which holds that a tenured teacher may not complain about a written reprimand under Education Law §3020-A because the reprimand is not a disciplinary action but an administrative evaluation. This decision is not applicable to the Taylor Law. The reprimand of an employee because, as a union official, he advises a fellow employee as to what he believes his rights to be constitutes interference with a protected right and a violation of §209-a.1(a). The District's second argument cites Pickering v. Board of Education, 391 U.S. 563 (1968) and Puentes v. Board of Education, 24 NY2d 996 (1969), which indicate that, under certain circumstances, criticism of a school district by a

teacher might not be protected by the first amendment, even if the critic is a union official. This argument, too, is inapplicable. The case before us does not involve the right of a union official to criticize his employer; it involves the right of a union representative to advise a unit employee to ignore a directive from his employer imposing what the official believes is not a proper working condition. The employee who follows that advice is exposing himself to the risk of being charged with insubordination, but the union official's right to give the advice is protected by the Taylor Law.^{3/}


NOW, THEREFORE, WE ORDER the District

1. to remove the original and all copies of the November 17, 1980 memorandum and all references to it from any files in its custody or control or in the custody or control of its officers, agents or employees, and to refrain from otherwise considering them or using them thereafter;
2. to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights protected by the Taylor Law;
3. to sign and post a notice in the form attached in every building in which a unit


^{3/} There is no protected Taylor Law right to advise public employees to strike, but that is not the nature of the advice that Bodkin gave to Kaufman.

employee works at all locations ordinarily
used to post notice of information to unit
employees.

DATED: February 25, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our employees that the Comsewogue Union Free School District (District)

1. Will remove the original and all copies of a memorandum dated November 17, 1980 from R. Peter Rovegna, Superintendent, to William Bodkin, and all reference thereto, from any file in the custody or control of the District, its officers, agents or employees and will not consider or otherwise use the memorandum or references thereto for any purpose hereafter;
2. Will not interfere with, restrain or coerce employees in the exercise of their rights under the Act.

.....
Comsewogue Union Free School District

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7362

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
COUNTY OF ORANGE,

#2D-2/26/82

Respondent,

BOARD DECISION AND ORDER

-and-

ORANGE COUNTY UNIT, ORANGE COUNTY
LOCAL 836, CIVIL SERVICE EMPLOYEES
ASSOCIATION, INC.,

CASE NO. U-5281

Charging Party.

JAMES G. SWEENEY, ESQ. (ALBERT
PACIONE, JR., ESQ., of Counsel),
for Respondent

ROEMER & FEATHERSTONHAUGH, ESQS.
(WILLIAM M. WALLENS, ESQ. of Counsel),
for Charging Party

This matter comes to us on the exceptions of the County of Orange (County) to a hearing officer's decision that the County violated §209-a.1(d) of the Taylor Law, by unilaterally increasing the maintenance fee required of certain employees for occupying County-owned residences. The employees are represented by the charging party, Orange County Unit, Orange County Local 836, Civil Service Employees Association, Inc. (CSEA)^{1/}.

^{1/} Although CSEA identified seven individuals as affected by the County's unilateral action and although the County has challenged CSEA's representational rights over the affected employees, it is nevertheless admitted that at least two of the employees are in the bargaining unit. Our jurisdiction is therefore established.

For many years the County has owned several residences which it has provided to some of its employees including those as to whom it raises no jurisdictional challenge. By local law, the County fixed the maintenance fee for the residences at \$75 per month in 1967 and at \$100 per month in 1972. These amounts have been deducted from the employees' paychecks. On February 13, 1981, the County, without negotiations with CSEA, by legislative resolution instituted an additional fee equal to 20% of the annual utility cost attributable to each residence. The fee is scheduled to increase by an additional 20% over succeeding years until the affected employees eventually bear the full cost of utilities. Uncontradicted testimony by affected employees discloses that when first hired they were informed that the low salaries of their respective positions were rationalized by the offered County-owned housing. In at least one case, residency in such housing was made a requirement of the job.

The principal exceptions of the County may be summarized as follows:

1. The payment of maintenance is not a term and condition of employment.
2. Rockland County BOCES, 41 NY2d 753 (1977), 10 PERB ¶7010, renders Triborough, 5 PERB ¶3037 (1972), inapplicable because the increased costs of fuels represent "increments" to the affected employees.

3. The inflationary increase in fuel costs creates an emergency condition justifying an exception to Triborough under the Wappinger decision, 5 PERB ¶3074 (1972).
4. Exercise by the public employer of its legislative authority to fix compensation cannot be an improper practice.

We affirm the decision of the hearing officer and conclude that her discussion adequately disposes of the first three exceptions as well as other tangential arguments which we have considered and find to be without merit. In support of the fourth exception listed above, the County argues that since it has legislative authority to abolish positions, a fortiori, it has authority to alter terms and conditions of employment.

We do not agree.

While the exercise of legislative authority, per se, may not sustain an improper practice charge, the manner of its exercise can, and has been found to provide the basis for the finding that an improper practice has been committed, Bd. of Trustees of the Ulster County Community College and the Ulster County Legislature, 4 PERB ¶3088 (1971). Further, the authority to abolish positions and offices is not an unfettered power. Thus, in Village of Wayland, 9 PERB ¶3084 (1976), confirmed sub nom. Village of Wayland v. PERB, 61 AD2d 674 (3d Dept., 1978), 11 PERB ¶7004, the abolition by the Village trustees of its police department was circumscribed by its obligation to observe the

Taylor Law and an improper practice found in that abolition was sustained as well as the remedial order issued therefor. The County's arguments, based upon the premise that the County Law and Municipal Home Rule give it preeminent power over conflicts arising under the Civil Service Law, have long been found to be wanting, City of Albany v. Helsby, 29 NY2d 433 (1972), 5 PERB

¶7000; City of Amsterdam v. Helsby, 37 NY2d 19 (1975), 8 PERB

¶7011; City of Albany and Maikels v. PERB, 57 AD2d 374, 3d Dept., (1977), 10 PERB ¶7012, aff'd. 43 NY2d 954 (1978), 11 PERB ¶7007.

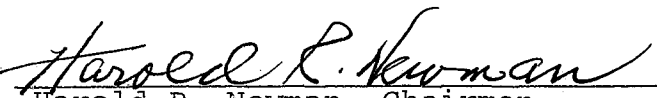
NOW, THEREFORE, WE ORDER the County of Orange to:

1. Negotiate in good faith with CSEA any change in the maintenance charge;
2. Rescind the revised maintenance schedule and reinstitute the amount formerly deducted from the affected employees' paychecks;^{2/}
3. Refund any monies received from the affected employees in excess of the former amount charged for maintenance with interest on such excess at the rate of three (3) percent per annum; and

2/ In a prior proceeding, County of Orange, 14 PERB ¶3060 (1981), this Board directed the County to rescind its action excluding some of the employees who are the subject of this case from the bargaining unit. The County has initiated an Article 78 proceeding which has been transferred to the Appellate Division and is now pending. Our order in this case is intended to extend also to those employees who are the subject of this proceeding and whose exclusion from the bargaining unit we previously disapproved.

4. Post a copy of the notice attached hereto at each location on its premises upon which notices of information to unit personnel are ordinarily posted.

DATED: Albany, New York
February 25, 1982


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

APPENDIX

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PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify our Employees that:

1. We will negotiate in good faith with CSEA any change in the maintenance charge;
2. We will rescind the revised maintenance schedule and reinstitute the former amount deducted from the affected employees' paychecks;
3. We will refund any monies received from the affected employees in excess of the former amount charged for maintenance with interest on this amount at the rate of three (3) percent per annum.

COUNTY OF ORANGE

.....
Employer

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7368

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of	:	#2E-2/26/82
CAPTAIN'S ENDOWMENT ASSOCIATION,	:	
	:	<u>BOARD DECISION AND ORDER</u>
Respondent,	:	
	:	
-and-	:	<u>CASE NO. U-5343</u>
	:	
BRUCE J. MALLORY,	:	
	:	
Charging Party.	:	
	:	

JOHN SNEEDEN, for Respondent

BRUCE J. MALLORY, pro se

The Captain's Endowment Association (Association) represents superior officers employed by the New York City Transit Police Department. Bruce J. Mallory is such an officer and was a member of the Association until April 15, 1977. He resigned his membership on that day because he opposed a lawsuit the Association was commencing and he objected to paying a \$100 assessment that it imposed upon each member in order to raise funds to pay for the lawsuit. In January, 1980, Mallory applied for reinstatement as a member of the Association. He was reaccepted on condition that he pay the \$100 assessment which he had not paid three years earlier and which had occasioned his resignation and that he pay a fine of \$100. Mallory then filed the charge herein in which he asserted that the assessment and the fine constituted penalties for exercising his legal right to resign from the Association.

The hearing officer concluded that the Association's demand that Mallory pay the assessment did no more than require him to pay an obligation for which he was in arrears at the time of his resignation. Accordingly, he dismissed that part of the charge that complained about the assessment. Mallory has filed no objections to this part of the hearing officer's decision. The hearing officer determined, however, that the imposition of the fine was an improper practice because it was imposed upon him for his act of resignation and the amount of the fine was related, in part, to the length of time he chose to exercise his right not to be a member of the Association.

The matter now comes to us on the exceptions of the Association to this part of the hearing officer's decision. In its exceptions, the Association asserts that the hearing officer erred in concluding that the fine was imposed for post-resignation conduct. It goes on to state that the fine was imposed because of "Mallory's nonpayment of an assessment" and because of his "resignation" at a time when it had to commence the lawsuit.

If the Association's stated reasons for fining Mallory are accepted, it may have been motivated by both a proper and an improper reason. It might have been proper for the Association to impose the fine because of Mallory's nonpayment of the assessment while still a member,^{1/} but it would not have been proper

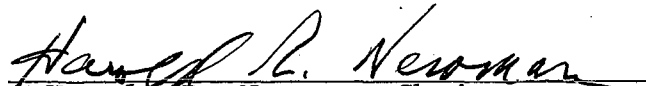
^{1/} It is not clear that Mallory was obligated to pay the assessment while still a member. He resigned two months after the assessment was imposed without having first paid it, but the resolution imposing the assessment gave members three months in which to pay.


for it to have done so as a penalty for Mallory's resignation. Section 202 of the Taylor Law explicitly gives public employees the right to refrain from "joining, or participating in, any employee organization . . .". A fine penalizing a public employee for exercising this right constitutes a violation of §209-a.2 of the Law.

When a decision to penalize a public employee is substantially motivated by reasons that are improper under the Taylor Law, the party imposing the penalty commits an improper practice even if additional legitimate reasons underlie its decision to do so. The Association's exceptions contain an admission that Mallory's resignation was a substantial factor in its decision to fine him. Accordingly, we affirm the decision of the hearing officer.

NOW, THEREFORE, WE ORDER the Association to cease and desist from requiring the payment of the fine as a condition for Mallory's reinstatement to membership in the Association and to post the attached notice in all places within the Transit Department to which it has access by contract, practice or otherwise.

Dated, Albany, New York
February 26, 1982


Harold R. Newman, Chairman


David C. Randles, Member

OPINION OF BOARD MEMBER KLAUS, CONCURRING

I find that the controlling reason for the fine was the act of resignation.

Dated, Albany, New York
February 26, 1982

Ida Klaus
Ida Klaus, Member

APPENDIX

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PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

The Captain's Endowment Association (Association) hereby notifies all persons included in the negotiating unit it represents within the New York City Transit Police Department that it will not require of its former members as a condition to their reinstatement to membership in the Association the payment of any fines levied upon them by reason of their resignation.

.....
Captain's Endowment Association

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

7373

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :

BRENTWOOD UNION FREE SCHOOL DISTRICT, :

Employer, #3A-2/26/82

-and-

TEAMSTERS UNION LOCAL 237, INTERNATIONAL :
BROTHERHOOD OF TEAMSTERS, :

Case No. C-2378

Petitioner, :

-and-

BRENTWOOD CLERICAL, SOCIAL, EDUCATION AND WELFARE :
ASSOCIATION, INDEPENDENT EMPLOYEES ASSOCIATION, :
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that

BRENTWOOD CLERICAL, SOCIAL, EDUCATION AND WELFARE
ASSOCIATION, INDEPENDENT EMPLOYEES ASSOCIATION

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Special education aide, school attendance aide and all competitive full-time and part-time clerical employees in the following titles: senior clerk typist, senior account clerk, clerk typist, senior clerk, clerk, principal clerk, key punch operator, computer programmer, account clerk, duplicating machine operator II, duplicating machine operator III, principal account clerk, graphics material designer, senior stenographer, stenographer, and computer operator II

Excluded: Administrative assistant to the superintendent, senior clerk typist/secretary to the superintendent, senior clerk typist/secretary to the business manager and senior clerk typists in the central office

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

BRENTWOOD CLERICAL, SOCIAL, EDUCATION AND WELFARE
ASSOCIATION, INDEPENDENT EMPLOYEES ASSOCIATION

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 25th day of February, 1982
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of :
ROCHESTER CITY SCHOOL DISTRICT, : #3B-2/26/82
Employer, :
-and- :
NEA/ROCHESTER, NYEA/NEA, : Case No. C-2338
Petitioner, :
-and- :
ROCHESTER TEACHERS ASSOCIATION, :
Intervenor. :

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that

ROCHESTER TEACHERS ASSOCIATION

has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All teachers [Salary Bracket TI and TII] including, but not limited to, Classroom Teachers; Contract Substitute Teachers; Attendance Teachers; Helping Teachers; Librarians; Guidance Counselors; Speech and Hearing Teachers; School Psychologists; School Social Workers and Library and Media Specialists

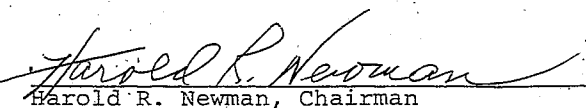
Excluded: All other employees of the employer

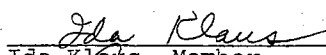
Further, IT IS ORDERED that the above named public employer shall negotiate collectively with

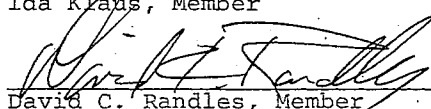
ROCHESTER TEACHERS ASSOCIATION

and enter into a written agreement with such employee organization with regard to terms and conditions of employment, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances.

Signed on the 25th day of February, 1982
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

Pursuant to and by virtue of the authority vested in the Public Employment Relations Board under Article 14 of the Civil Service Law, I, Harold R. Newman, Chairman of the Public Employment Relations Board, acting on behalf of such Board, hereby amend NYCRR Title 4, Chapter VII, as follows. Any parts of the Rules of the Board not explicitly mentioned herein remain in effect as previously promulgated. These amendments shall take effect on , 1982.

Section 201.3(h) is hereby added as follows:

201.3(h) A petition for certification may be filed during the fifth month of the fiscal year of a public employer to determine the unit placement of a position which is not claimed by any party to the proceeding to be within an existing unit and which has been created or reclassified since the first day of the fifth month of the previous fiscal year of the public employer; provided, however, that no employee organization which has been recognized or certified may file such petition concerning any position which was created or reclassified prior to such recognition or certification.

Section 201.4(e) is hereby amended as follows:

§201.4(e) The Director may direct an investigation and, if necessary, a hearing whenever he deems it appropriate to ascertain whether the evidence submitted is accurate. If he determines that evidence is fraudulent or that the declaration is false, he shall take such reasonable action [that] as he deems appropriate to protect the integrity of the procedures of the Board in connection with the pending matter. Such a determination and such action taken by the Director shall be reviewable by the Board pursuant to section 201.12 of these Rules.

Section 201.5(a)(7) is hereby amended as follows:

§201.5(a)(7) If an employee organization, whether the [requisite] showing of interest requirement, as set forth in sections 201.3 and 201.4 of these Rules, is met.

Section 201.5(b)(8) is hereby amended as follows:

§201.5(b)(8) If an employee organization, whether the [requisite] showing of interest requirement, as set forth in sections 201.3 and 201.4 of these Rules, is met.

Section 201.10(e) is hereby amended as follows:

§201.10(e) Intervention. One or more persons or an employee organization acting in their behalf may be permitted, in the discretion of the Board, [or in the discretion] of the Director, or the designated trial examiner, to intervene in the proceeding. The intervenor must make a motion on notice to all parties in the proceeding. Supporting affidavits establishing the basis for the motion may be required by the Board, [or] the Director, or the designated trial examiner. If intervention is permitted, the person or employee organization becomes a party for all purposes,

Section 201.12(a) is hereby amended as follows:

§201.12(a) Within [10] 15 working days after receipt of the decision of the Director, a party may file with the Board an original and four copies of a statement in writing setting forth exceptions thereto, and an original and four copies of a brief in support thereof shall be filed with the Board simultaneously, at which time copies of such exceptions and brief shall be served upon each party to the proceeding and proof of such service shall be filed with the Board.

Section 201.12(c) is hereby amended as follows:

§201.12(c) Within seven working days after service of exceptions, any party may file an original and four copies of a response thereto or cross-exceptions and a brief in support thereof. Copies of these documents shall simultaneously be served upon each party to the proceeding, at which time proof of such service shall be filed with the Board.

Section 202.4(g)(5) is hereby amended as follows:

§202.4(g)(5) If an employee organization, whether the [requisite] showing of interest requirement, as set forth in sections 201.3 and 201.4 of these Rules, is met.

Section 204.10(c) is hereby amended as follows:

§204.10(c) Within [five] 15 working days after receipt of a decision of the Director dismissing a charge because the facts alleged do not, as a matter of law, constitute a violation of the Act, the charging party may file with the Board an original and four copies of a statement in writing setting forth his appeal from the decision, together with proof of service of a copy thereof upon each respondent. The statement shall set forth the reasons for the appeal.

Section 207.7(b) is hereby amended as follows:

§207.7(b) Additional Lists. If a party determines that more than two names on a panel list are unacceptable, a request by such party for an additional panel list shall be filed with the Director of Conciliation within the ten-day time period established for selection and preferential ranking. A copy of such request shall be sent to the other party simultaneously. Each party shall have the right to request one additional list, and consequently, no party shall receive more than three panel lists. Pursuant to the selection process, if the parties fail to select an arbitrator after the submission of a third panel list, the Director of Conciliation shall take whatever steps are necessary to designate an arbitrator.

Section 214.2 is hereby amended as follows:

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§214.2 Filing of Reports by Public Employers. Each public employer [who] which grants recognition to an employee organization, including every local government

that has obtained a determination by the Board that its provisions and procedures are substantially equivalent to the provisions and procedures set forth in the Act and these Rules, and public employee organizations that are recognized or certified, shall file with the Board such reports as the Board shall require.